

**UNION COUNTY, IOWA**  
**SOLAR ORDINANCE—DRAFT.....**

Be it enacted by the Board of Supervisors of Union County Iowa:

**Purpose and Intent.** The purpose of this Ordinance is to establish minimum requirements and regulation of any Applicant/Developer/Owner engaged in the construction, erection, placement, location, maintenance, modification, operation, and decommissioning of Utility Scale Solar Energy Systems (US-SES) and Battery Energy Storage Systems (BESS) in Union County, Iowa. The intent of this Ordinance is to facilitate the construction, installation, and operation of Utility Scale Solar Energy Systems (US-SES) and Battery Energy Storage Systems (BESS) in Union County in a manner that preserves and protects the rights, privileges, and property of the County and its residents, that ensures the protection of the health, safety, and welfare of the county's residents, and that provides an opportunity for economic growth and development. Concentrating Solar Power Systems (CSP) shall be prohibited in Union County. All future Utility Scale Solar Energy System and Battery Energy Storage Systems (BESS) projects, as well as those currently contracted by agreement, permitted, or planned, shall follow this Solar Energy Systems Ordinance. This Ordinance shall not apply to US-SES and BESS projects in Union County completed prior to the enactment of this ordinance.

**Section 1. Definitions.** For use in this Ordinance, certain words used herein shall be defined as follows:

**Agreement.** A legally binding document signed by both a participating landowner and an owner or operator for a specific purpose, including but not limited to a contract, easement, or lease.

**Applicant.** The person or entity submitting the application under this Ordinance, which is normally expected to be the owner or operator of a US-SES, or the owner of the US-SES development.

**Battery Energy Storage System (BESS).** One or more devices, assembled together, capable of storing energy, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A BESS may be a stand-alone project or in conjunction with a US-SES Project.

**BESS Construction Permit.** A permit issued by Union County, which is required before construction of a BESS is allowed in Union County. If a BESS is proposed in conjunction with a US-SES project, the permits may be combined and submitted as one application.

**Board of Supervisors.** A board elected by Union County residents.

**Concentrating Solar Power Systems.** A system that generates solar power by using mirrors, lenses, or similar reflecting surfaces to concentrate sunlight collected over large areas onto smaller focal areas.

**Developed Project Acres.** The total project area that is subject to an agreement between the Owner/Operator and the Participating Landowner and is actually developed and utilized for placement of a US-SES.

**Easement.** A legal agreement for the use of property for a specified purpose.

**Non-Participating Landowner.** A landowner who has not signed a binding agreement with the Applicant/Developer/Owner of the LUS-SES project.

**Occupied Structure.** For the purpose of this ordinance, shall include any existing occupied house, apartment, barn or machine shed regularly used by the property owner, or parties in possession of the property at the time of the permit application. \*See Waiver Agreement

**Owner.** The entity or entities with an equity interest in the US-SES or the BESS, including their respective successors and assigns. Owner does not mean the landowner from whom a lease, easement, or other property right is acquired for locating the US-SES or the BESS unless the landowner has an equity interest in the US-SES or the BESS, or any person holding a security interest in the US-SES or the BESS solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the US-SES or the BESS at the earliest practical date.

**Participating Landowner.** A landowner who has signed a binding agreement with the Applicant/Developer/Owner of the US-SES or the BESS project.

**Project Area.** The geographic area encompassing all components of a US-SES or the BESS project, including border fencing.

**Property Line.** The legal boundary between separately owned real estate parcels, and between privately owned parcels and publicly owned land or public right of way.

**Setback.** The minimum required distance from a certain object, structure or point to the edge of any part or component of the US-SES or the BESS.

**Utility Scale Solar Energy System (US-SES).** Also known as solar power plants and solar farms, an alternative energy facility that consists of ground mounted or freestanding sunlight or solar collection devices, solar energy related equipment, and other associated infrastructure with the primary intention of generating electricity from photovoltaics or concentrated solar power, or otherwise converting energy to a different form of energy, to be distributed to the electrical grid or other off-site use. This does not include small-scale solar panels or technologies installed at individual residential or commercial locations (e.g. roof or ground mounted panels) that are used exclusively for private purposes and not utilized for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.

**US-SES Construction Permit.** A permit issued by Union County, which is required before construction of a US-SES is allowed in Union County.

**Section 2. Cap on Total Acres Utilized for US-SES.** There shall be a cap of eight hundred (800) total, Developed Project Acres, inside the fence, in Union County devoted to placement of Utility Scale Solar Energy Systems. A participating landowner who wishes to appeal the denial of a US-SES Construction permit on the basis that the total acreage cap has been met or exceeded must contact the Union County Auditor's Office to receive the current Appeal for Variance form. The participating landowner must complete the form in its entirety, and file it with the Union County Auditor's Office for review by the Board of Supervisors.

**Section 3. Permit Application Requirements.** The applicant for the siting and construction of a Utility Scale Solar Energy System (US-SES) and/or Battery Energy Storage System (BESS) shall file an application with the Union County Engineer, or their designee, along with the permit fee of \$250.00, prior to commencing construction.

The application for a Utility Scale Solar Energy System Construction Permit shall include:

1. A written US-SES project summary, including (1) a general description of the project, including the approximate generating capacity; (2) the model and equipment manufacturer for the solar panel array; (3) the name, address, email address, and telephone number of the applicant, project owner, and/or project operator; and (4) the legal description of the property or properties on which the Utility Scale Solar Energy System will be located.
2. A site plan of the US-SES site to be an aerial photograph of the project location and surrounding area or a scale drawing showing all of the following:
  - a. Boundaries of the site;
  - b. All proposed SES structures and other support structures, including the number, location, spacing, and height of solar panels/arrays and the planned location of underground or overhead electrical lines;
  - c. All proposed fencing to surround the SES structures and other support structures;
  - d. Location of property lines, including identification of adjacent properties and whether they are participating or non-participating;
  - e. Setback measurements between the fencing, solar panel(s) and/or equipment closest to the required protected areas, and all applicable property lines, occupied structure, road right of ways, intersections, and airports. This provision does not include underground facilities, such as cable;

- f. An Emergency Plan and safety data sheets has been filed with the Auditors Office & local Fire Department. Once project is completed, a glint and glare study must be presented to have on file in the Union County Auditor's Office.
3. A description of the anticipated life of the US-SES or the BESS, the anticipated manner in which the project will be decommissioned, the anticipated site restoration actions, the estimated decommissioning costs in current U.S. dollars, the method for ensuring that funds will be available for decommissioning and restoration; and evidence of an agreement with the property owner for the location of the US-SES or the BESS that ensures proper removal of all equipment and restoration of the site within twelve (12) months of decommissioning or abandonment of the project.
4. Consultation with or notifications from relevant state and federal agencies showing the project will not be a hazard to wildlife, communications, air traffic, and other related matters.
- Upon receipt of the complete application and permit fee, the Union County Engineer, or their designee, shall review the application. Upon the determination by the Union County Engineer, or their designee, that the requirements of this Ordinance have been satisfied, the completed US-SES Construction Permit Application and any/all necessary supporting documentation shall be presented to the Union County Board of Supervisors for approval. The Union County Board of Supervisors, upon approval of the application, shall provide any necessary building permits for each US-SES. If there are changes to the information as provided as a part of the application that occur from the time of the application until the time of the construction of the US-SES or the BESS, the applicant shall submit a new application together with the updated information and any such change shall be in compliance with this Ordinance. The Union County Engineer, or their designee, shall present the amended and completed US-SES Construction Permit Application to the Union County Board of Supervisors using the process described above.

**Section 4. General Requirements for Utility Scale Solar Energy Systems (US-SES) and Battery Energy Storage Systems (BESS).** US-SES shall be subject to the following requirements:

1. Setbacks. All US-SES or the BESS and any upgrades to existing solar energy systems shall observe the following setbacks, to be measured from the edge of the solar panels and equipment (not underground facilities such as cable or fencing):

Protected Area	Setback Requirement
Occupied Structure	300 feet from occupied structure
Any non-participating parcel	100 feet from property line to solar panels
Public road right of way	75 feet from road right of way for paved roads 50 feet from right of way for gravel roads
Substation/BESS	300 feet from occupied structure. This setback requirement shall not apply to an occupied structure located within an area designated commercial and industrial for taxation, at the time of the permit application.

2. Waiver. Participating and non-participating landowners may sign a waiver consenting to the placement of US-SES or the BESS and/or upgrades closer than the setback requirements outlined above.
3. Safety. NESC compliance fencing with a minimum of a 5 (five) barbed wire fence shall be required in all projects permitted by this ordinance.
4. Insurance. Applicants shall provide evidence, in the form of a certificate of insurance satisfactory to the county, showing general liability insurance coverage for the installation and operation of the project under a standard homeowner's or standard business owner's insurance policy, separate and distinct from any requirements of a public utility.
5. Ground Cover. All solar panels shall have fast growing & native perennial vegetation planted and maintained beneath them, including a mix of grasses and wild flowers and a vegetation plan will be on file in the Auditor's Office. The site shall be maintained to prevent fire hazards. Only minimal concrete or gravel type cover of property is permissible.
6. Certification & Compliance. All US-SES or the BESS shall conform to applicable industry standards, including those from the Underwriters Laboratory (UL) and Federal Aviation Administration (FAA), and shall be in compliance with all applicable local, state, and federal regulatory standards and applicable electrical codes, including the National Electric Code (NEC) and National Electric Safety Code (NESC). Any as built plans, must be submitted within twelve (12) months of completion of the project.

**Section 5. Public Infrastructure Damage Avoidance/Mitigation & Decommissioning.**

1. Roads. The applicant or owner of the US-SES or the BESS shall enter into a road use agreement, substantially in the form attached to this Ordinance, with Union County prior to the start of construction of the US-SES or the BESS project. Union County's approval and execution of the agreement shall not be unreasonably withheld.
  
2. Decommissioning. The US-SES's owner shall enter into a decommissioning agreement, substantially in the form attached to this Ordinance, with Union County Engineer, or their designee, prior to the start of construction of the US-SES project. Union County's approval and execution of the agreement shall not be unreasonably withheld. The plan shall include:
  - a) A description of the plan to remove the US-SES's equipment, or at land owner's request, to restore the land to its previous use upon the end of the project's life.
  - b) Provisions for the removal of structures, debris, and associated equipment on the surface and to a level of not less than four (4) feet below the surface, and the timeline/sequence in which removal is expected to occur;
  - c) Provisions for the restoration of the soil, vegetation and disturbed earth, which shall be graded and reseeded;
  - d) An estimate of the decommissioning costs certified by a licensed professional engineer in current dollars. The engineer providing this estimate shall submit it to the Union County Engineer, or their designee, for review and all costs associated with this engagement shall be borne by the applicant;
  - e) A written financial plan approved to ensure that funds will be available for Decommissioning and land restoration;

- f) A provision that the terms of the decommissioning plan shall be binding upon the owner or operator and any of their successors, assigns, or heirs.
- g) Upon review of the decommissioning plan, the Union County Board of Supervisors shall set an amount to be held in a bond, escrow, or other acceptable form of funds approved by the Board. The value of the surety shall not be reduced based on the salvage value of any materials or equipment. The plan shall state that Union County shall have access to the project and to the funds to effect or complete decommissioning one (1) year after cessation of operations; and,
- h) The applicant shall provide the county with a new estimate of the cost to decommission the US-SES project every five (5) years under the same conditions as set forth in this Sections above. Salvage value of structures, electrical wire and other appurtenances shall not be considered with in the cost estimate calculations. Upon receipt of this new estimate, the county may require, and the applicant, owner, and/or operator of the US-SES project shall provide, a new financial plan for decommissioning acceptable to the county. Failure to provide an acceptable financial plan shall be considered a cessation of operations.
- i) Release of Financial Security. Financial security shall only be released when the Board of Supervisors determines, after inspection, that the conditions of the decommissioning plan have been met.

**Section 6. Miscellaneous.**

1. Condemnation Waiver. Issuance of a US-SES Construction Permit shall be conditioned on the permit holder's enforceable promise, supported by the consideration of the issuance of the US-SES Construction Permit, that the permit holder shall never use, or seek to use, eminent domain to acquire any real property interests to construct or operate the project.
2. Legal Fees. In any action brought by the County against the permit holder or a US-SES Construction Permit to enforce the provisions of this Ordinance, the County shall be entitled to recover its reasonable attorney's fees and court costs as may be awarded by the decision-making tribunal.

**Section 7. Transfer.** Building permits and associated decommissioning and road use agreements granted under this Ordinance may be transferred to another party subject to Union County Board of Supervisors approval, which approval shall not be unreasonably withheld. Any assignee of the building permits and associated decommissioning and road use agreements shall be subject to all the requirements in this Ordinance and the agreements.

**Section 8. Severability.** Should any section or provisions of this Ordinance be declared by the courts to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so declared to be invalid or unconstitutional.

**Section 9. Penalty.** Any person, persons, firms, partnerships or corporations, whether acting alone or in concert with any other, who violates this Ordinance, shall be guilty of a simple misdemeanor as authorized by Iowa Code section 331.302.

**Section 10. Effective Date.** This Ordinance shall be in effect after its final passage, approval, and publication as required by law.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_ Board of Supervisors

Attest: \_\_\_\_\_ County Auditor